101ST CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 101-244
Part 2

CENTRAL AMERICAN STUDIES AND TEMPORARY RELIEF ACT OF 1989

OCTOBER 19, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. MOAKLEY, from the Committee on Rules, submitted the following

REPORT

[To accompany H.R. 45]

The Committee on Rules, to whom was referred the bill (H.R. 45) to provide for a General Accounting Office investigation and report on conditions of displaced Nicaraguans and Salvadorans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Nicaraguans and Salvadorans, and for other purposes, having considered the same, report thereon with the recommendation that the bill do pass.

PURPOSE OF LEGISLATION

The purpose of H.R. 45 is to provide Temporary Protected Status [TPS] to Salvadorans and Nicaraguans present in the United States since March 1, 1989. The bill prevents the forced repatriation of Salvadorans and Nicaraguans to their homelands for three years. H.R. 45 directs the General Accounting Office [GAO] to investigate and report to the Congress concerning the living conditions and available assistance for Salvadorans and Nicaraguans displaced inside and outside their countries, and requires such investigation to examine the fate of Salvadoran and Nicaraguans required to depart from the United States. It also directs the GAO to determine the treatment and status of Salvadoran and Nicaraguan nationals in the United States. The Comptroller General will submit the report to the Congress not later than two years after the date of the initiation of the study.

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BASIS OF REPORTING

In favorably reporting the bill, the committee is aware that the purposes of H.R. 45 can be met, with greater speed and flexibility, under existing legal authorities delegated to the Attorney General. And the committee would again urge the administration to review its policy with respect to refugees from El Salvador and Nicaragua.

The committee believes that a more humanitarian approach to the situation, more consistent with the nation's obligations under international law, by the administration, actually would be preferable to the enactment of any rigid legislative prescription.

The present legislation, however, has been prompted by the failure of the administration to operate within the framework of consultative shaping of foreign policy and refugee policy, and the inability of Congress to affect policy through the customary and more preferable "sense of Congress" legislation.

LEGISLATIVE HISTORY

98th Congress

The Congress enacted H.R. 1510, the Immigration Reform and Control Act. Included in this bill was "sense of the Congress" language that extended voluntary departure be granted to certain nationals of El Salvador in the United States. Also in that Congress, H.R. 4447, a bill to temporarily suspend the deportation of Salvadorans, pending a study of conditions in that country was introduced by Representative Joe Moakley and was reported favorably by the House Subcommittee of Immigration, Refugees and International Law. Due to the lateness of the session, no action was taken on the bill by the Judiciary Committee prior to the adjournment of the 98th Congress.

99th Congress

Representative Moakley introduced H.R. 822 (legislation similar to H.R. 4447).

During the course of this Congress, the bill was modified to include Nicaraguan nationals at the suggestion of Representatives Barney Frank, Larry Smith, and the late Claude Pepper. An amendment based on the modified bill was added as original text to the Immigration Control and Legalization Amendments Act (H.R. 3810) in the House Rules Committee. An attempt to delete the provision on the floor of the House was defeated by a vote of 199 to 197. However, the provision was removed in the House-Senate conference on H.R. 3810.

100th Congress

Representative Moakley introduced H.R. 618 on January 20, 1987. The bill moved expeditiously through the Judiciary and Rules Committees. On July 28, 1987, the bill was brought to the House floor. The accompanying rule, House Resolution 230, treated as original text an amendment in the nature of a substitute similar to H.R. 618, as reported by the Judiciary Committee but containing some minor differences. The substitute was adopted by a recorded vote of 237 to 181.

101st Congress

Representative Moakley introduced H.R. 45 to temporarily suspend the detention and deportation of Salvadoran and Nicaraguan nationals currently in the United States on January 3, 1989. On July 28, 1989, the bill was favorably reported by the House Judiciary Committee.

On October 17, 1989, in the House Rules Committee, favorably reported H.R. 45 for consideration by the House of Representatives.

BACKGROUND

H.R. 45 is based on the concept and past practice of Extended Voluntary Departure [EVD]. EVD a temporary suspension of deportation normally granted by the Attorney General upon recommendation of the Secretary of State. It has been granted to 14 different national groups during the last 29 years. It has generally been granted to nationals whose homelands were experiencing "extreme civil strife" or "unsettled conditions". The following is a list of countries whose nationals were granted EVD by the Attorney General: Cuba, 1960 to 1966; Dominican Republic, 1966 to 1978; Czechoslovakia, 1968 to 1977; Chile, 1971 to 1977; Cambodia, 1975 to 1977; Vietnam, 1975 to 1977; Laos, 1975 to 1977; Lebanon, 1976 to present (case by case); Ethiopia, 1977 to present (for those here prior to 1980); Uganda, 1978 to 1986; Iran, 1979; Nicaragua, 1979 to 1980; Afghanistan, 1980 to present; and Poland, 1981 to 1989.

A remedy such as EVD has been recognized as necessary because people may have legitimate fears of generalized violence but may not be able to prove a fear of individualized persecution, the standard for political asylum.

That an individual cannot prove a well-founded fear of persecution provides no guarantee that he/she will be allowed to lead a life of peace and security. If there is random violence or civil warfare in a country it is of little consolation to an individual struck by a stray bullet that the person who pulled the trigger was aiming at someone else.

Recognizing this situation, every administration since and including that of President Eisenhower has permitted one or more groups of otherwise deportable aliens to remain temporarily in the United States out of concern that the forced repatriation of these individuals could endanger their lives or safety.

While the conditions in El Salvador and Nicaragua are similar to conditions in other countries whose nationals have been granted EVD, the administration has been unwilling to provide protection to these nationals by granting them this temporary protection.

For the most part, the Bush administration has reiterated the same position of its predecessor. The Reagan administration held that all EVD decisions required a balance of judgment regarding foreign policy, humanitarian, and immigration concerns (see statement of Deputy Assistant Secretary of State Laura J. Dietrich before House Judiciary Subcommittee on Immigration and Refugees and International Law, November 7, 1985).

The State Department has held that there has not been the widespread fighting, destruction and breakdown of public services and

order that had been present in other situations when the United States granted blanket voluntary departure.

However, there has been conflict in 13 of El Salvador's 14 departments and 12 of Nicaragua's 16 departments. On the day of Salvadoran President Cristiani's inauguration, the rebels knocked out electricity in 90 percent of the country.

The administration has argued that the "asylum" process meets the necessary U.S. obligations to protect Salvadorans and Nicaraguans.

However, very few Salvadorans and Nicaraguans are being afforded the protection of asylum. During this fiscal year through July, INS District Directors have considered 12,579 cases of Salvadorans requesting political asylum. Only 255 or 2 percent of these cases have been granted. During this same period, 12,842 Nicaraguan cases were considered and only 3,036 or 23.6 percent were granted.

While the percentage of Salvadorans granted political asylum has remained constant at 2 percent during the last eight years, Nicaraguan percentages have fluctuated greatly. For example, during fiscal year 1988, 53.2 percent of the Nicaraguan asylum cases were granted and, as has been mentioned, during fiscal year 1989 through July, only 23.6 percent were granted. It remains unclear as to why 30 percent fewer Nicaraguan asylum claims were considered legitimate within only a few months. In any case, the current status of Nicaraguan and Salvadoran exiles in the United States remains unsettled—with the strong possibility of deportation as a constant threat.

In fiscal year 1988, 2,730 Salvadorans and 31 Nicaraguans were deported to their homelands. During that same period, 1,344 Salvadorans and 133 Nicaraguans were required to depart the United States. In fiscal year 1989 through July, 3,048 Salvadorans and 87 Nicaraguans were deported. During that same period, 661 Salvadorans and 65 Nicaraguans were required to depart. It is clear from these statistics that substantial numbers of Salvadorans and Nicaraguans are forcibly repatriated to their homelands.

The Federal courts, in several landmark decisions, have held that INS adjudication of Salvadoran and Nicaraguan asylum applications have violated statutory, regulatory and treaty requirements. In the *U.S.* vs. *Cardoza-Fonseca (1987)*, the Supreme Court noted that the INS was imposing an unlawfully restrictive standard of proof on asylum applicants and that the efforts of Federal courts to apply the proper standard of proof "stand in stark contrast to—but, it is sad to say, alone cannot make up for—the years of seemingly purposeful blindness by the INS."

In *Orantez-Hernandez* vs. *Meese (1988)*, the Federal district court in Los Angeles found that a "substantial number of Salvadorans who flee El Salvador and enter the U.S. possess good faith claims to asylum." However, as the court also held, their ability to present their asylum claim was undermined because the INS has systematically discriminated against Salvadoran asylum seekers by, among other things, "misrepresenting the meaning of political asylum and giving improper and incomplete legal advice to detained (Salvadorans)," "telling (Salvadorans) that if they apply for

asylum they will remain in detention for a long period of time" and "refusing to allow (Salvadorans) to contact an attorney."

In several other Federal court law suits and numerous administrative appeals, review of INS treatment of asylum applicants from El Salvador and Nicaragua establishes a clear pattern of discrimination, arbitrary treatment and arbitrary denials of asylum claims.

It is estimated that some 500,000 Salvadorans and 200,000 Nicaraguans are currently in the United States. The situations in both El Salvador and Nicaragua continue to remain uncertain.

El Salvador

It is estimated that 65,000 Salvadorans have been killed during the 9-year war. While the Salvadoran Government and the FMLN combatants have recently begun negotiations, conflict in the country remains very high. Following the first round of talks in early September 1989, the FMLN staged military operations in nine of the country's fourteen departments. Also during that period, there was a wave of Government arrests, focused primarily on trade unionists and religious and humanitarian relief workers.

Death squad killings have decreased since their peak in the early 1980's. However, there is still an intolerably high level of human rights violations in that tiny country. Americas Watch calls the human rights situation in El Salvador "a disaster." They report that between January 1989 and July 13, 1989, there were 39 civilians killed by Government forces, 17 by death squads and 56 by the guerrillas. They also report a growing number of credible reports of torture of detainees by the military and security forces.

FMLN human rights abuses have risen dramatically. According to Americas Watch:

> The increase in deaths form FMLN mines and explosives, combined with targeted killings by the FMLN has caused, for the first time in our knowledge, the numbers of FMLN violations to outpace those attributed to uniformed members of the security forces.

The FMLN follows a strategy of seeking to disrupt the operations of the economy: it hold traffic bans, which disrupt normal commercial activity; it extorts "war taxes" to raise income; and it has increasingly resorted to sabotage of economic targets. The group's stated goal is to worsen economic conditions in order to turn workers against the Government. Droughts, floods, and the 1986 earthquake also damaged the economy and general state of affairs in El Salvador.

Some Salvadoran refugees, previously living in Honduras, have returned to their homeland in recent months to their original communities. These refugees have subsequently been confronted with many difficulties and hardships. It has been reported that shipments of food and medicine designated for these communities have been prevented from reaching their destination by military forces. Several of the returned refugees have been arrested, tortured and later released without charge.

Nicaragua

Since the beginning of the Nicaraguan war, over 29,000 people have been killed. While the United States now sends only "non-lethal" aid to the Contras, Contra attacks have been reported in seven of Nicaragua's departments. Nongovernmental organizations have documented 22 civilians killed, 15 wounded, and 59 kidnapped since enactment of the bipartisan accord in April of 1989.

In a letter to the Central American Presidents on August 5, 1989, Americas Watch wrote that it had found—

> evidence of a pattern of violent abuses by Government forces in remote areas of Nicaragua's Region 6 (Matagalpa and Jinotega) between 1987–89. The abuses include political killings and disappearances by the army and state security police. The targets are primarily suspected Contra collaborators. Americas Watch has presented the Nicaraguan Government with information on 89 such killings or disappearances which took place between 1987–89.

There have also been reports by the U.S. State Department and press of targeted executions and general repression. A Los Angeles Times story on April 16, 1989 elaborates on this point:

> Throughout a year-old ceasefire that has all but halted traditional combat, Sandinista forces and U.S.-backed Contras have waged a quite battle of targeted executions on a scale at least as large as it was at the height of the seven year conflict * * * Witness descriptions of the tactics on both sides of this struggle are chillingly similar. Contras and Sandinistas pose in uniforms of the enemy to seek informers, who are fingered by deserters from each side. Victims are beaten on long marches through the hills, often without shoes, to die with their throats slashed.

While plans for Nicaragua's upcoming elections dominate news from that country, military engagements are reportedly increasing as Contra troops attempt to reinfiltrate into Nicaragua before the December deadline set by the Central American presidents for the dismantling of Contra bases in Honduras. As the Washington Post reported on October 14, 1989:

> Since August, the Contras are believed to have deployed nearly 2,000 more troops inside Nicaragua, and reports of clashes between Contra and Sandinista forces have risen sharply in recent weeks.

The election period has also seen increasing political tensions, with charges that the Sandinistas have resorted to harassment and threats against opposition party members.

In a letter to the U.S. Congress dated October 16, 1989, Nicaraguan Resistance leader, Adolfo Calero, stated about the current situation facing his people:

> With regard to Nicaragua, we are at a crossroads. Driven out of their country by 10 years of Sandinista oppression, there are perhaps 150,000 Nicaraguans now living in the United States without clear legal status. They

have no confidence in the "promises" of the Sandinista Marxist regime. They are afraid to return at this time. They feel increasingly abandoned * * * The United States has asserted its commitment to democracy in Nicaragua. Democracy has not been achieved. The February elections in Nicaragua will not be fair.

ANALYSIS OF H.R. 45 AS AMENDED

The following is a section-by-section analysis of H.R. 45, as reported from the Committee on the Judiciary:

Section 101.—Requires the General Accounting Office (GAO) to conduct an investigation, beginning within 60 days of enactment, concerning the following with regard to displaced Salvadorans and Nicaraguans in Central America: (1) their number and location; (2) their place of origin and the length of, and reason for, their displacement; (3) their living conditions and safety; (4) ways in which their health and personal safety may be made more secure; (5) the impact of the wars in those countries and the activities of government officials and political parties on the matters described in (1) through (4); (6) the impact of the 1986 earthquake in El Salvador; and (7) the ability of El Salvador and Nicaragua to absorb returnees. Also requires GAO to study—(1) the condition and number of Salvadorans and Nicaraguans returned to those countries from the U.S.; (2) the situation in those countries compared to countries whose nationals have been granted Extended Voluntary Departure; and (3) the treatment and condition of Salvadorans and Nicaraguans illegally in the United States.

Section 102.—Requires GAO to submit a report to Congress not later than two years after beginning the study, detailing the findings of the study.

Section 201.—Requires the appropriate committees of each House of Congress to hold hearings on the report within 90 days of receiving referral of the report. Delineates certain issues that must be considered by the committees during such hearings. Within 270 days of continuous session of Congress of receiving referral of the report such Committees must report findings and legislation they deem appropriated. Defines continuous session.

Section 301.—Grants Salvadorans and Nicaraguans "temporary protection status" in the United States for three years from the date of enactment. Establishes a cutoff date—March 1, 1989—by which aliens covered will have had to have been in the United States in order to receive protection. Requires registration within a 180-day registration period. Gives the Attorney General a period of time (60 days) from the date of enactment to set up the program. Also requires re-registration annually. Requires issuance of work authorizations. Specifies grounds for exclusion similar to those in the legalization program. Limits any registration fee to $50 per person. Allows the Attorney General to rescind benefits for failure to register and for other reasons. Requires that beneficiaries remain "continuously physically present" in the United States from the date on which they were provided protection, but allows brief casual and innocent absences from the United States. Specifies that nothing in this section shall be construed as authorizing

an alien to apply for admission to the United States in order to apply for temporary protected status. Provides that applications for Temporary Protected Status shall remain confidential. Prohibits the Attorney General from detaining any alien eligible for temporary protected status.

Section 302.—Provides that periods spent in temporary protected status shall not cause a break in the continuity of residence for puorposes of suspension of deportation. Clarifies that aliens granted "temporary protected status" can travel abroad with the prior consent of the Attorney General. Specifies that a nonimmigrant may not qualify for temporary protected status until such individual's period of authorized stay as a nonimmigrant has expired. Disqualifies from programs of public assistance.

COMMITTEE VOTE

Clause 2(l)(2)(B) of rule XI requires each committee report to accompany any bill or resolution of a public character, ordered to be reported by a recorded vote, to include the total number of votes cast for and against the reporting of the measure.

On October 17, 1989, the committee ordered the measure reported to the House, favorably, without amendment, by voice vote, a quorum being present.

COMMITTEE COST ESTIMATE

Clause 7(a) of rule XI requires that certain committee reports contain committee cost estimates.

That provision does not apply to the Committee on Rules. The committee has proposed no changes in the bill and accepts the Congressional Budget Office estimates printed in the report of the Committee on the Judiciary on the bill (H. Rept. 101-244, Part 1).

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Clause 2(l)(3)(B) of rule XI requires that each committee report contain any statement required by section 308(a) of the Congressional Budget Act of 1974.

Clause 2(l)(3)(C) of rule XI requires that each committee report contain any cost estimate and comparison prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

Estimates are included in the report of the Committee on the Judiciary on the bill (H. Rept. 101-244, Part 1). Since the Committee on Rules proposes no amendments, it has not elected to duplicate printing.

INFLATION IMPACT STATEMENT

Clause 2(l)(4) of rule XI requires that each committee report contain a statement relating to the inflationary impact of the enactment of that measure.

The committee is aware of none.

OVERSIGHT FINDINGS

Clause 2(l)(3)(A) of rule XI requires that each committee report contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X.

The committee has reviewed the proposed legislation, and expressed views regarding the rules proposed by the amendments, in the section of the report entitled "Background and Summary."

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

Clause 2(l)(3)(D) of rule XI requires that each committee report contain any oversight findings and recommendations made by the Committee on Government Operations pursuant to clause 4(c)(2) of rule X.

No such findings and recommendations have been received.

ADVISORY COMMITTEES

Section 5(b) of the Federal Advisory Committees Act (Public Law 92-463), enacted as an exercise of the rulemaking power of the House, requires the report accompanying any bill or joint resolution to contain certain findings of the committee with respect to any advisory committee established by the legislation.

H.R. 45 creates no advisory committees.

COMPARATIVE PRINT

Clause 4(d) of rule XI requires reports from the Committee on Rules, on resolutions amending the Rules of the House of Representatives, to contain a comparative print indicating changes in the existing rules.

Although the bill, as proposed to be amended, would make changes in the rules of the House, it would do so in a bill and in a manner that does not directly amend the Rules of the House of Representatives.

The committee has included a discussion of the rules, in the portion of this report entitled "Background and Summary," which meets the information needs contemplated by clause 4(d) of rule XI.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Clause 3 of rule XIII requires the report to accompany a bill or joint resolution which repeals or amends existing law to contain a comparative print showing the changes made by the bill as reported. Matter in compliance with the Ramseyer rule is printed in the report of the Committee on the Judiciary on the bill (H. Rept. 101-244, Part 1). Since the Committee on Rules proposes no amendments, it has not elected to duplicate that printing.

VIEWS OF COMMITTEE MEMBERS

Clause 2(l)(5) of rule XI requires each committee to afford a three day opportunity for members of the committee to file additional, minority, or dissenting views and to include the views in its report.

Although neither requirement applies to the committee, it always makes the maximum effort to provide its members with such an opportunity.

No views were submitted.

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